THE AMES COMPETITION. — The modifications introduced this year in the Ames Competition, by substituting a round-robin tournament between second-year law clubs for the old elimination tournament, have had excellent results in operation. Forty-four cases were argued in the course of the six rounds. This is more than twice the number argued last year, and more than were argued in any two previous years of the Competition, taken together. It is estimated that over one hundred second-year men participated in the arguments, more than half of whom argued two cases. Twenty law clubs entered the first round of the Competition, and fourteen remained through the sixth. No prizes were awarded for work during this preliminary tournament, but pursuant to the rules newly adopted this year, the following clubs, which won five out of the six cases argued, will be admitted to the elimination tournament next year leading directly to the Ames Prizes: Kent, Marshall. Moody, and Westengard.

TRIAL BY NEWSPAPER. — Flagrant newspaper reports and comment upon trials pending in the courts so often go unnoticed and unpunished, that the summary and courageous action of two federal judges recently is indeed refreshing to all desirous of the orderly and fair administration of justice. A federal district judge, sitting in New York City, took from the jury a pending suit for alienation of affections, and sent it to the foot of the calendar for the reason that an interview with the plaintiff had been widely featured in the morning papers. *Kleist* v. *Breitung*.[1] Only a short time before, a federal district judge in Ohio summarily laid a heavy contempt fine upon a local daily for having urged the violation of an injunction during a street railway agitation and otherwise expressed in partisan language an attitude antagonistic to the court. *United States* v. *Toledo Newspaper Co.*[2] Both were conscientious attempts to uphold the dignity of the courts and further justice, yet no doubt both called forth from the aggrieved papers a storm of indignation and a cry that

[1] (Unreported.) Feb. 12, 1915. Learned Hand, J. The interview was given by the plaintiff himself without the knowledge of counsel, and related to facts not in evidence and prejudicial to the defendant. The power of district courts to order a new trial for misconduct of the parties is not defined, but left to rest on common-law principles. U. S. R. S., § 726. There appears to be no precisely analogous case, but there are cases such as Baker *v.* State, 82 Ga. 776, 9 S. E. 743, where a new trial was ordered because plaintiff discussed his case within hearing of the jury during recess.

[2] Killits, J. (not yet reported). There seems to be considerable doubt whether a federal district court can summarily punish a newspaper for contemporaneous comment under any circumstances. In no other case has it ever been done, and there is an old decision squarely *contra*. *Ex parte* Poulson, 19 Fed. Cas., No. 11,350. The statute says, "The said courts shall have power to punish . . . contempts of their authority; Provided, that such power shall not be construed to extend to any cases except misbehavior of any person in their presence, or so near thereto as to obstruct the administration of justice." U. S. R. S., § 725. Judge Killits in an elaborate opinion declares that the former decision referred to reflects the influence of a local state statute on the judge who decided it, is inconsistent with the historical setting surrounding the passing of the act as seen in the Congressional debates, and has been virtually repudiated by expressions of opinion in the Supreme Court in later cases.

In Massachusetts, the state courts have no hesitation in punishing newspapers for contempt of court in such cases. See Globe Newspaper Co. *v.* Commonwealth, 188 Mass. 449.

the rights of the people must be championed and judicial oppression overthrown.

Criticism of a court after a case has terminated is properly subject to no limitation except the law of libel,[3] but discussion that is before or contemporaneous with a trial may be the source of very serious injustice to litigants. Where the jury are allowed full liberty outside of session time, the possibility of misinformation and prejudice is almost unlimited. To keep them in close confinement is not only an unwelcome remedy, but one that is thoroughly inadequate. It leaves untouched the reaction upon the judge himself when his animosity is aroused by press comment, the effect upon the jury before it is impanelled, and also the very powerful indirect forces that reach a jury after the trial begins. In spectacular trials like that of Leo Frank, Thaw, Hattie Le Blanc, or Luetgert, where all the great dailies devote several pages to the testimony, and flaunt daring headlines about the guilt or innocence of the accused, public opinion runs so high that no amount of precaution can prevent its being felt by the jury.

With this in mind the English courts have adopted a strict view which would probably go the full length of forbidding any publication whatever if the necessity seemed strong enough.[4] Public opinion would not permit our courts to adopt this view. Not only is the mystery of a closed door too much for the American public to endure, but they somehow feel themselves entitled to their breakfast table thrill, as though by immemorial user.[5] It would be much better to allow unrestricted a *verbatim* report of all the evidence that goes to the jury [6] coupled with such purely descriptive comment as is reasonable and impartial, and an addition of the arguments on points of law if it is desired. The difficulties which this creates in case a second trial becomes necessary are more than offset by the suspicion which would immediately attach to any court that adopted Star Chamber methods. But any attempt by a newspaper independently to run down clues ahead of their appearance in court, to supplement the trial by the publication of facts not appearing in testimony, to print evidence which the judge rules inadmissible, to report argument on the facts which takes place while the jury are excluded, or to give partisan comment upon the testimony either directly or by the subtle innuendo of headlines should be severely frowned upon and punished by the imposition of heavy fines if necessary. The jurisdiction of the court to punish for contempt should be based upon the character of the acts done rather than on any technical rule about the "presence of the court." If some such dividing line as above suggested could be clearly established, friction between the newspapers and the courts from misunderstandings as to the power of each would be lessened. It would give the public information without partisanship, and would make less frequent the essentially arbitrary remedy of summary process for contempt. If the action of Judge Hand and Judge Killits is followed by similar summary punishment of offenders by other courts, clear rules may eventually be developed for the trial of causes by juries instead of printer's ink.

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[3] See Storey *v.* People, 79 Ill. 45.
[4] King *v.* Clement, 4 B. & Ald. 218; Hunt *v.* Clarke, 58 L. J. Q. B. 490, 494.
[5] See 42 NAT. CORP. REP. 153.
[6] See *In re* Shortridge, 99 Cal. 526, 34 Pac. 227.